

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

-----  
IN THE MATTER OF:

THE LIGHTMAN DRUM COMPANY  
SUPERFUND SITE

Alco Industries, Inc.  
American Packaging Corporation  
Baxter Healthcare Corp.  
Bayer CropScience, Inc.  
Colonial Heights Packaging, Inc.  
Continental Holdings, Inc  
Croda Inks Corporation  
DAP, Inc.  
Forenco, Inc.  
Henkel Corporation  
Kimberly-Clark Tissue Company  
LANXESS Sybron Chemicals, Inc.  
Jerome Lightman  
Lightman Drum Company  
Loos & Dilworth, Inc.  
Mannington Mills, Inc.  
Reynolds Metals Company  
Sara Lee Corporation  
Seton Company  
Sonoco Products Company  
Stepan Company  
Strick Corporation  
Union Carbide Corporation  
United States Steel Corporation  
USG Corporation,

Respondents

Proceeding Under Section 106(a)  
of the Comprehensive Environ-  
mental Response, Compensation  
and Liability Act of 1980, as  
amended, 42 U.S.C. §9606(a).

U.S. EPA Index No.  
CERCLA-02-2011-2018

Administrative Order for  
Remedial Design and Remedial Action

ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION  
TABLE OF CONTENTS

I.	<u>INTRODUCTION AND JURISDICTION</u> .....	1
II.	<u>FINDINGS OF FACT</u> .....	1
III.	<u>CONCLUSIONS OF LAW</u> .....	7
IV.	<u>DETERMINATIONS</u> .....	8
V.	<u>NOTICE TO THE STATE</u> .....	8
VI.	<u>ORDER</u> .....	8
VII.	<u>DEFINITIONS</u> .....	8
VIII.	<u>NOTICE OF INTENT TO COMPLY</u> .....	13
IX.	<u>PARTIES BOUND</u> .....	13
X.	<u>WORK TO BE PERFORMED</u> .....	14
XI.	<u>FAILURE TO ATTAIN PERFORMANCE STANDARDS</u> .....	19
XII.	<u>EPA PERIODIC REVIEW</u> .....	19
XIII.	<u>ADDITIONAL RESPONSE ACTIVITIES</u> .....	20
XIV.	<u>ENDANGERMENT AND EMERGENCY RESPONSE</u> .....	20
XV.	<u>EPA REVIEW OF SUBMISSIONS</u> .....	21
XVI.	<u>PROGRESS REPORTS</u> .....	22
XVII.	<u>QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS</u> .....	22
XVIII.	<u>COMPLIANCE WITH APPLICABLE LAWS</u> .....	23
XIX.	<u>REMEDIAL PROJECT MANAGER</u> .....	24
XX.	<u>ACCESS TO SITE NOT OWNED BY RESPONDENTS</u> .....	25

XXI. <u>SITE ACCESS AND DATA/DOCUMENT AVAILABILITY</u> .....	25
XXII. <u>RECORD PRESERVATION</u> .....	26
XXIII. <u>DELAY IN PERFORMANCE</u> .....	27
XXIV. <u>UNITED STATES NOT LIABLE</u> .....	27
XXV. <u>ENFORCEMENT AND RESERVATIONS</u> .....	28
XXVI. <u>ADMINISTRATIVE RECORD</u> .....	29
XXVII. <u>EFFECTIVE DATE AND COMPUTATION OF TIME</u> .....	29
XXVIII. <u>OPPORTUNITY TO CONFER</u> .....	29
XXIX. <u>TERMINATION AND SATISFACTION</u> .....	30

## APPENDICES

Appendix A: Map of Site

Appendix B: Record of Decision

Appendix C: Statement of Work

ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Order directs the Respondents to perform the remedial design and implement the remedial action for the soil described in the Record of Decision for the second Operable Unit ("OU2") issued on September 19, 2011, for the Lightman Drum Company Superfund Site ("Site") located in Winslow Township, Camden County, New Jersey. This Order is issued to the Respondents by EPA pursuant to the authority vested in the President of the United States by Section 106(a) of CERCLA, as amended, 42 U.S.C. §9606(a). This authority was delegated to the Administrator of EPA by Executive Order 12580, dated January 23, 1987, and was redelegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. This authority was further redelegated on November 23, 2004, by the Regional Administrator of EPA, Region 2 to the Director of the Emergency and Remedial Response Division by EPA Region 2 Delegation R-1200.

II. FINDINGS OF FACT

2. The Site consists of the Lightman Drum Property, which comprises approximately 15 acres located at 139 North Route 73, Winslow Township, Camden County, New Jersey and all structures located therein. The Site also includes the areas into which hazardous substances from the Lightman Drum Property have migrated or threaten to migrate. Located in a semi-rural area, approximately 8,000 people live within a three mile radius of the Site. Jerome Lightman owns the Lightman Drum Property, and Lightman Drum Company, Inc. ("LDC") d/b/a United Cooperage currently operates a drum brokerage business there. A small office building, several sheds, a drum storage area, and an empty tractor trailer storage area are situated on the Lightman Drum Property, with the remainder of the Site consisting of mostly vacant land, along with some recent commercial developments.

3. In the 1970s, LDC operated an industrial waste hauling and drum reclamation business. LDC moved its operations to the Site in spring 1974, storing empty drums and drums filled with wastes there. In 1974, an inspector for the New Jersey Department of Environmental Protection ("NJDEP") inspected the Site and ascertained that LDC disposed of chemical material from drums into two excavated areas. The inspector detected a strong solvent and lacquer odor emanating from the excavated areas. During further inspections from 1974 to 1982, NJDEP observed evidence of chemical spills at the Site. Inspectors also noted numerous drums containing chemicals, which were allowed to run onto the ground, and many drums leaking wastes onto the ground.

4. In 1977, NJDEP determined that LDC installed two 5,000-gallon underground storage tanks ("Former Waste Storage Tanks") in the north-central portion of the Site in order to store waste materials, including waste paint pigments, thinner and solvents. In 1978, NJDEP issued a

one-year Temporary Operating Authorization to LDC allowing it to store wastes at the Site, including, but not limited to, chemical powders, pesticides, waste oil, oil sludges, paint, pigment, thinner, ink residues, ketone, alcohols, and mixed solvents. NJDEP did not renew the Temporary Operating Authorization.

5. In 1984, an NJDEP inspector observed that the Former Waste Storage Tanks had been excavated. The inspector noted stains on the exterior of one Waste Storage Tank, holes in that Waste Storage Tank and stains on the ground immediately beneath the holes and stains, indicating that the Waste Storage Tank had leaked while underground.

6. NJDEP issued an Administrative Order ("New Jersey Order") to LDC in 1988 requiring it to conduct a remedial investigation and feasibility study at the Site. The soil investigation conducted pursuant to the New Jersey Order revealed that the surface and subsurface soil contained numerous hazardous substances, including volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), inorganic chemicals and pesticides. A groundwater investigation conducted pursuant to the New Jersey Order determined that the groundwater underlying the Site contained hazardous substances, including VOCs and semi-volatile organic chemicals.

7. At the request of NJDEP, EPA performed a Hazard Ranking System ("HRS") Evaluation of the Site in May 1999 pursuant to 40 CFR Part 300, Appendix A. The purpose of the HRS Evaluation was to assess the potential score of the releases at the Site to determine its eligibility for placement on the National Priorities List ("NPL") set forth at 40 CFR Part 300, Appendix B. Based on the results of the HRS Evaluation, EPA placed the Site on the NPL by publication in the Federal Register on October 22, 1999, 48 Fed. Reg. 40658.

8. In November 2000, a number of potentially responsible parties collectively known as the Lightman Yard PRP Group entered into an Administrative Order on Consent, U.S.E.P.A. Index No. 02-2000-2034 ("November 2000 AOC"), with EPA. The November 2000 AOC required the Lightman Yard PRP Group to conduct a Remedial Investigation/Feasibility Study ("RI/FS") and perform other actions at and relating to the Site.

9. Information gathered during the RI indicates that two plumes of contaminated groundwater underlie the Site. One plume extends approximately 4,500 feet downgradient south from a source on the Site directly under the Former Waste Storage Tank Area. A municipal water supply well operated by Winslow Township is located approximately 3,000 feet to the west of the end point of this plume. The second plume extends approximately 1,500 feet downgradient south from an area on the Site where a waste disposal pit was situated.

10. During the RI/FS, samples were taken of water-saturated soil located below the water table in the immediate vicinity of the Former Waste Storage Tanks. Analyses of the samples detected elevated levels of hazardous substances, including VOCs such as tetrachloroethene, trichloroethene, ethylbenzene and xylene, in that soil. This contamination represented a

continuing source of contamination for the contaminated plume that extends 4,500 feet south from the Former Waste Storage Tank Area.

11. In September 2007, EPA issued an Administrative Order on Consent, U.S.E.P.A. Index No. 02-2007-2007, to the Lightman Yard PRP Group requiring it to conduct a removal action ('Removal Action') for removal and off-site disposal of the contaminated saturated soil. The Removal Action was completed in 2009.

12. Samples taken during the Removal Action indicated that another area of elevated VOC concentrations was present in the subsurface soil located just east of the area excavated during the Removal Action.

13. EPA decided to address the area of VOC-contaminated soil ("Operable Unit 2 Area") as a separate operable unit, OU2, and address the contaminated groundwater as Operable Unit 1 ("OU1").

14. Data obtained during the RI/FS for OU1 confirmed the presence of elevated levels of hazardous substances in the groundwater underlying the Site, including but not limited to 1,1,2-trichloroethane, 1,2,4-trichlorobenzene, benzene, cis-1,2-dichloroethene ethylbenzene, perchloroethylene, trichloroethene, toluene, vinyl chloride, and xylenes.

15. The Site is located in the New Jersey Pinelands Protection Area, and the groundwater underlying the Site and surrounding areas is classified under New Jersey Ground Water Quality Standards as Class 1-PL ("NJGWQS"). The hazardous substances in the groundwater exceed NJGWQS criteria.

16. On September 30, 2009, EPA issued a Record of Decision documenting the selection of the remedy for OU1 ("OU1 ROD"). OU1 includes construction of an air sparging and soil vapor extraction system and construction of a groundwater pump and treat system.

17. The Cohansey-Kirkwood aquifer underlies the Site and is used as a source of potable water in the area surrounding the Site. As stated in the OU1 ROD, the contaminated groundwater poses a significant risk to human health and the environment because the continued migration of contaminants in the groundwater threatens a public water supply well and potential direct contact with the groundwater.

18. On June 2, 2010, EPA issued Administrative Order, U.S.E.P.A. Index No. 02-2010-2019, as modified on June 22, 2010 (hereafter "OU1 Order"), directing 23 potentially responsible parties to perform the remedial design and remedial action for OU1.

19. The respondents to the OU1 Order are currently preparing the remedial design for the OU1 Remedy.

20. In May 2011, the Lightman PRP Group completed a Remedial Investigation and Focused Feasibility Study of the Operable Unit 2 Area ("OU2 RI/FFS") pursuant to the terms of the November 2000 AOC.

21. The OU2 RI Report presents the results of laboratory analyses samples taken in the Operable Unit 2 Area during the Removal Action. The results of laboratory analyses of 24 samples show that the soil in the Operable Unit 2 Area is contaminated with hazardous substances, including but not limited to, elevated levels of perchloroethylene and trichloroethylene. The analyses of samples of the soil in the Operable Unit 2 Area also indicate the presence of other hazardous substances, including but not limited to, ethylbenzene and xylenes.

22. Pursuant to Section 117 of CERCLA, 42, U.S.C. § 9617 EPA published a notice of availability of a proposed plan in a major local newspaper of general circulation on June 10, 2011. On June 22, 2011 EPA conducted a public meeting to present the findings of the OU2 RI/FFS and respond to questions about the proposed remedial alternatives. A public comment period was held from June 16, 2011 through July 11, 2011.

23. On September 19, 2011, EPA issued a Record of Decision selecting the remedy for OU2 ("ROD"). The major component of the selected remedy is construction of a soil vapor extraction system. The ROD is appended to this Order as Appendix B and is incorporated by reference as if fully set forth herein. The ROD is supported by an Administrative Record that contains the documents and information upon which EPA based the selection of the response action. The Administrative Record for the Site is available at the EPA-Region II office in New York, NY and at the Camden County Library, South County Branch in Atco, NJ.

24. As stated in the ROD, the contaminated soil in the Operable Unit 2 Area continues to be a source of contamination to the groundwater underlying the Site. The contaminated groundwater, in turn, poses a significant risk to human health and the environment because the continued migration of contaminants in the groundwater threatens a public water supply well and potential direct contact with the groundwater.

25. Jerome Lightman is the current owner of a portion of the Lightman Drum Property and was an operator of the Site at the time hazardous substances were disposed of at the Site.

26. LDC operated the Site and accepted hazardous substances for transport to the Site at the time hazardous substances were disposed of at the Site.

27. Each of the Respondents below by contract, agreement, or otherwise arranged with LDC, for disposal or treatment, or transport for disposal or treatment, of hazardous substances or is a successor to a company that made such arrangement or arrangements.

- a. Alco Industries, Inc. formerly Synthane-Taylor Corporation, arranged for the disposal of hazardous substances, pollutants or contaminants, including waste

solvents from Synthane-Taylor Corporation's facility in Valley Forge, Pennsylvania.

b. American Packaging Corporation arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents from its facility in Philadelphia, Pennsylvania.

c. Baxter Healthcare Corp, formerly Harleco Corporation, arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents from its facility in Gibbstown, New Jersey.

d. Bayer CropScience, Inc., formerly Stauffer Chemical Company, ("Stauffer") arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents such as trichloroethylene, from its facility in Delaware City, Delaware.

e. Colonial Heights Packaging, Inc., formerly Milprint, Inc., arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents, inks, and toluene from its facility in Downingtown, Pennsylvania.

f. Continental Holdings, Inc., formerly Continental Can Company, Inc., ("Continental") arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents, inks, and toluene from its facility in Malvern, Pennsylvania.

g. Croda Inks Corporation, formerly Richardson Ink Company, arranged for the disposal of hazardous substances, pollutants or contaminants, including waste inks and solvents such as toluene from its facility in Malvern, Pennsylvania.

h. DAP, Inc., formerly Permalastic Products Company, and USG Corporation ("Permalastic") arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents, toluene, and xylene, from Permalastic's facility in Trenton, New Jersey.

i. Forenco, Inc., formerly Whiting-Patterson, Inc., arranged for the disposal of hazardous substances, pollutants or contaminants, including waste inks and solvents, from its facility in Philadelphia, Pennsylvania.

j. Henkel Corporation and Union Carbide Corporation, formerly Amchem Products, Inc. ("Amchem"), arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents and benzene from Amchem's facility in Amber, Pennsylvania.

k. Kimberly-Clark Tissue Company, formerly Scott Paper Company, arranged for the disposal of hazardous substances, pollutants or contaminants,



including waste vinyl acetate, and pigments from its facility in Landisville, New Jersey.

l. LANXESS Sybron Chemicals, Inc., arranged for the disposal of hazardous substances, pollutants or contaminants, including drums of waste solvents from its facility in Birmingham, New Jersey.

m. Loos & Dilworth, Inc. arranged for the disposal of hazardous substances, pollutants or contaminants, including drums of slop oil from its facility in Bristol, Pennsylvania.

n. Mannington Mills, Inc. arranged for the disposal of hazardous substances, pollutants or contaminants, including inks from its facility in Salem, New Jersey.

o. Reynolds Metals Company arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents from its facility in Bellwood, Virginia.

p. Sara Lee Corporation, formerly Kiwi Shoe Polish Company, arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents, from its facilities in Pottstown, Pennsylvania and Douglasville, Pennsylvania.

q. Seton Company, formerly Wilmington Chemical Corporation, arranged for the disposal of hazardous substances, pollutants or contaminants, including waste solvents and toluene from its facility in Wilmington Delaware.

r. Sonoco Products Company arranged for the disposal of hazardous substances, pollutants or contaminants, including waste inks and solvents, from its facility in Downingtown, Pennsylvania.

s. Stepan Company arranged for the disposal of hazardous substances, pollutants or contaminants, including waste xylene from its facility in Bordentown, New Jersey.

t. Strick Corporation arranged for the disposal of hazardous substances, pollutants or contaminants, including tar and paint from its facility in Fairless Hills, Pennsylvania.

u. United States Steel Corporation arranged for the disposal of hazardous substances, pollutants or contaminants, including waste, solvents such as xylene, and waste paint from its facility in Delair, New Jersey.

28. LDC transported to and disposed of at the Site some or all of the hazardous substances, pollutants or contaminants, which LDC received from each of the Respondents noted in

Paragraph 27. Many of the hazardous substances, pollutants and contaminants removed from each of the Respondents' facilities, as noted in Paragraph 27, were found in the soil and groundwater at the Site.

29. This Order addresses the soil remedy as selected in the ROD.

### III. CONCLUSIONS OF LAW

30. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

31. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

32. Each Respondent is a person who is liable under one or more subsections of Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for conditions at the Site and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

33. Many of the substances found in the soil and groundwater at the Site, as set forth in Section II above (Findings of Fact), including the substances that were generated by the Respondents as noted in Paragraph 27 above, are hazardous substances within the meaning of that term as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

34. The disposal of hazardous substances at the Site, the presence of hazardous substances in the soil and subsequent migration of hazardous substances from the soils into the groundwater beneath the Site, and the potential migration of all such substances from the Site, as described in Section II above (Findings of Fact), constitute actual or threatened "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22). Each such release of a hazardous substance from the Site is also an "actual . . . release of a hazardous substance from a facility" as that phrase is used in Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

35. The potential for further migration of hazardous substances from the soils into the groundwater beneath the Site and the potential migration of all such substances from the Site as described in II above (Findings of Fact) constitute a " . . . threatened release of a hazardous substance from a facility" as that phrase is used in Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

36. The release or threatened release of hazardous substances into the groundwater at the Site poses an imminent and substantial endangerment to the public health or welfare or the environment.

37. The contamination and endangerment at this Site constitute an indivisible injury. The actions required by this Order are necessary to protect the public health, welfare and the environment.

#### IV. DETERMINATIONS

38. Based on the FINDINGS set forth above, EPA has determined that the release and threatened release of hazardous substances into the environment at and from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

39. A response action of the type contemplated by the National Oil and Hazardous substances Pollution Contingency Plan in 42 C.F.R. Part 300, is required at the Site to prevent and/or mitigate any actual and/or potential threat of harm to human health or welfare or the environment caused by the release and threatened release of hazardous substances from the Site.

40. The response actions described in and which are the subject of the ROD are cost effective, are consistent with achieving a permanent remedy at the Site and are consistent with all other requirements of Section 121 of CERCLA, 42 U.S.C. §9621.

#### V. NOTICE TO THE STATE

41. Notice of this Order has been given to the New Jersey Department of Environmental Protection on September 19, 2011 pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

#### VI. ORDER

42. Based on the foregoing FINDINGS, CONCLUSIONS and DETERMINATIONS, Respondents are hereby ordered to comply with the following provisions, including but not limited to, all attachments, documents, schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

#### VII. DEFINITIONS

43. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

B. "Cleanup Goals" shall mean those standards to which the soil will be restored as set forth in the ROD and the SOW.

C. "Day" (or "day") shall mean calendar day.

D. "EPA" shall mean the United States Environmental Protection Agency.

E. Former Waste Storage Tank Area shall mean an area of the Site identified on the map attached as Appendix A.

F. "Hazardous Substance" shall mean any substance that falls within the definition of a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), and shall also mean any mixture(s) containing any such hazardous substance(s) at any concentration.

G. "NCP" shall mean the National Oil and Hazardous substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, at 40 C.F.R. Part 300, and all amendments or modifications thereto.

H. "Lightman Drum Property" shall mean the property located at 139 N. Route 73 in Winslow Township, New Jersey, identified as Block 4004, Lot 6 on the tax map of Winslow Township, and depicted generally on the map attached as Appendix A.

I. "NJDEP" shall mean the New Jersey Department of Environmental Protection.

J. "Operable Unit 1" or "OU1" shall mean the operable unit for which EPA selected a remedy in the Record of Decision issued by EPA for the Site on September 30, 2009, and all actions required to implement that remedy.

K. "OU1 ROD" shall mean the Record of Decision relating to OU1 of the Site signed on September 30, 2009, by the Director of the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto.

L. "OU1 Order" shall mean Administrative Order, U.S.E.P.A. Index No. 02-2010-2019, as modified, issued by EPA for OU1.

M. "Operable Unit 2" or "OU2" shall mean the operable unit for which EPA selected a remedy in the Record of Decision issued by EPA for the Site on September 19, 2011, and all actions required to implement that remedy.

N. "Operable Unit 2 Area" shall mean an area of the Site identified on the map attached as Appendix A.

O. "ROD" shall mean the Record of Decision relating to OU2 of the Site signed on September 19, 2011, by the Director of the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto. The ROD is incorporated into this Order and is an enforceable part of this Order. The ROD is appended to this Order as Appendix B.

P. "Operation and Maintenance" or "O&M" shall mean all activities required under the Operation and Maintenance Plan developed by Respondents pursuant to this Order and the SOW, and approved by EPA.

Q. "Order" shall mean Administrative Order U.S. EPA Index No. CERCLA-02-2011-2018 issued by EPA for OU2.

R. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

S. "Performance Standards" shall mean Cleanup Goals and other measures of achievement of the goals of the Remedial Action for OU2 selected in the ROD and the SOW, including the standards and other measures of achievement set forth or referenced on pages 18 and 28-30 of the ROD and Sections I, II, and XII of the SOW.

T. "Project Coordinator" shall mean the person designated by the Respondents pursuant to Section III of the SOW, who will be charged with the duty of being at all times knowledgeable of the performance of all Work performed pursuant to this Order.

U. "Remedial Action or "RA" shall mean those activities to be undertaken by Respondents to implement the ROD in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

V. "Remedial Design" or "RD" shall mean those activities undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

W. "Remedial Design Work Plan" shall mean the document developed pursuant to Section VI of the SOW and approved by EPA and any amendments thereto.

X. "Respondents" shall mean the parties as named in the caption to this Order, and includes their officers, employees, agents, subsidiaries, assigns and successors. The Respondents are:

- i. Alco Industries, Inc., a Pennsylvania corporation, which has its principal place of business in Norristown, Pennsylvania.
- ii. American Packaging Corporation, a Pennsylvania corporation, which has its principal place of business in Columbus, Wisconsin.
- iii. Baxter Healthcare Corp. Delaware corporation, which has its principal place of business in Deerfield, Illinois.
- iv. Bayer CropScience, Inc., a New York corporation, which has its principal place of

business in Research Triangle Park, North Carolina.

- v. Colonial Heights Packaging, Inc., a Delaware corporation, which has its principal place of business in Glen Allen, Virginia.
- vi. Continental Holdings, Inc., a Wyoming corporation, which has its principal place of business in Broomfield, Colorado.
- vii. Croda Inks Corporation, a Delaware corporation, which has its principal place of business in Parsippany, New Jersey.
- viii. DAP Inc., a Delaware corporation, which has its principal place of business in Chicago, Illinois.
- ix. Forenco, Inc., an Illinois corporation, which has its principal place of business in Chicago, Illinois.
- x. Henkel Corporation, a Delaware corporation, which has its principal place of business in Rocky Hill, Connecticut.
- xi. Kimberly-Clark Tissue Company, a Pennsylvania corporation, which has its principal place of business in Roswell, Georgia.
- xii. Jerome Lightman, an individual who is believed to be a resident of Cherry Hill, New Jersey.
- xiii. LANXESS Sybron Chemicals, Inc., a Delaware corporation, which has its principal place of business in Birmingham, New Jersey.
- xiv. Lightman Drum Company, a Pennsylvania corporation, which has its principal place of business in Winslow Township, New Jersey.
- xv. Loos & Dilworth, Inc. a Pennsylvania corporation, which has its principal place of business in Bristol, Pennsylvania.
- xvi. Mannington Mills, Inc., a New Jersey corporation, which has its principal place of business in Salem, New Jersey.
- xvii. Reynolds Metals Company, a Delaware corporation, which has its principal place of business in New York, New York.
- xviii. Sara Lee Corporation, a Maryland corporation, which has its principal place of business in Exton, Pennsylvania.

- xvix. Seton Company, a New Jersey corporation, which has its principal place of business in Norristown, Pennsylvania.
- xx. Sonoco Products Company, a South Carolina corporation, which has its principal place of business in Hartsville, South Carolina.
- xi. Stepan Company, a Delaware corporation, which has its principal place of business in Northfield, Illinois.
- xxii. Strick Corporation, a Delaware corporation, which has its principal place of business in Fairless Hills, Pennsylvania.
- xxiii. Union Carbide Corporation, a New York corporation, which has its principal place of business in Danbury, Connecticut.
- xxiv. United States Steel Corporation, a Delaware corporation, which has its principal place of business in Pittsburgh, Pennsylvania.
- xxv. USG Corporation, a Delaware corporation, which has its principal place of business in Chicago, Illinois.

Y. "Response Costs" shall mean all costs, including, but not limited to, direct costs, indirect costs, and accrued interest incurred by the United States to perform or support response actions relating to the Site. The term "Response Costs" shall also include, but is not limited to, the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order and costs associated with verifying the Work.

Z. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more Paragraphs.

AA. "Site" shall mean the Lightman Drum Company Superfund Site, including the Lightman Drum Property and areas into which hazardous substances from the Lightman Drum Property have migrated or threaten to migrate.

BB. "State" shall mean the State of New Jersey.

CC. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, Operation and Maintenance, and institutional controls at the Site. The Statement of Work is attached as Appendix C to this Order and is incorporated into this Order and is an enforceable part of this Order.

DD. "United States" shall mean the United States of America, including but not limited to, the United States Environmental Protection Agency.

EE. "Waste Material" shall mean any substance which is any one or more of the following:

- (1) a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14); or
- (2) a "pollutant or contaminant" as those terms are defined in Section 101(33) of CERCLA, 42 U.S.C. §9601(33); or
- (3) any "solid waste" under Section 1004 (27) of the federal Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. §6903(27); or
- (4) any mixture containing any of the constituents noted in (1), (2), or (3), above.

FF. "Work" shall mean all work and other activities that Respondents are required to perform under this Order, including, but not limited to, tasks described in the Statement of Work, the Remedial Design, the Remedial Action, and achievement of Performance Standards for the remedy selected in the ROD for OU2, Operation and Maintenance, establishment of institutional controls, and any other activities required to be undertaken pursuant to this Order.

#### VIII. NOTICE OF INTENT TO COMPLY

44. Respondents shall provide, not later than 14 days after the effective date of this Order, written notice to EPA's Remedial Project Manager ("RPM") and Assistant Regional Counsel for the Site at the address specified in Section XIX, stating whether Respondents will comply with the terms of this Order. If Respondents do not unequivocally commit to perform or finance the Work as provided by this Order, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. If applicable, Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondents' assertions.

#### IX. PARTIES BOUND

45. This Order shall apply to and be binding upon the Respondents, their principals, officers, employees, agents, directors, subsidiaries, assigns and successors. Respondents are responsible for completing the Work and all applicable requirements of this Order. No change in the ownership, corporate status, or other control of the Respondents shall alter any of the Respondents' responsibilities under this Order.

46. Respondents shall provide a copy of this Order to any prospective owners or successors



before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. §9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

47. Within 5 days after the effective date of this Order, the Respondent who holds title to the Lightman Drum Property shall record a copy of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded and shall ensure that the recording of this Order is indexed to the title Respondent's real property at the Site so as to provide notice to third parties of the issuance and terms of this Order. The same Respondent shall, within fifteen 15 days after the effective date of this Order, send notice of such recording and indexing to EPA.

48. Not later than 60 days prior to any transfer of any real property interest in any property included within the Site, the Respondent referred to in Paragraph 47 above shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

#### X. WORK TO BE PERFORMED

49. Respondents shall give EPA 14 days advance notice of all field activities to be performed pursuant to this Order. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

50. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a qualified supervising contractor the selection of which shall be subject to approval by EPA. The Supervising Contractor shall be selected in accordance with Section III of the SOW.

51. If at any time Respondents propose to use a different supervising contractor, Respondents shall notify EPA and shall obtain approval from EPA using the procedures specified in Section III of the SOW before the new supervising contractor performs any work under this Order.

62. Following EPA approval, the draft Remedial Action Work Plan shall become the Remedial Action Work Plan and shall be incorporated into and an enforceable part of this Order.

63. Within 30 days after the approval of the Remedial Action Work Plan by EPA, Respondents shall initiate construction of the RA pursuant to and in accordance with the Final RD Report (100% completion), the Remedial Action Work Plan, the SOW and this Order. Unless otherwise directed by EPA, Respondents shall not commence construction of the RA prior to EPA approval of the Remedial Action Work Plan.

64. Respondents shall submit to EPA for review and approval pursuant to Section XV (EPA Review of Submissions) of this Order, an Operations and Maintenance Plan no later than 180 days prior to the scheduled completion date of construction. The O&M Plan shall be prepared in conformance with EPA guidelines contained in *Considerations for Preparation of Operation and Maintenance Manuals*, EPA 68-01-0341. The O&M Plan shall include, but not be limited to, a Post Remediation Sampling Plan and all other items set forth in Section X.D.3. of the SOW. Following EPA approval, the Operation & Maintenance Plan shall be incorporated into and an enforceable part of this Order.

65. The Work performed by Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards specified in the ROD. Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards in the ROD and SOW. Nothing in this Order, or in EPA's approval of the SOW, or in the Remedial Design or Remedial Action Work Plans, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards set forth in the ROD and in the SOW. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable Performance Standards.

66. At least 14 days prior to the completion of the construction, Respondents and their contractor(s) shall be available to accompany EPA personnel and/or its representatives on a pre-final inspection. The pre-final inspection shall consist of a walkthrough of the construction areas to determine the completeness of the construction and its consistency with EPA approved documents, the SOW, this Order, the ROD and applicable federal and state laws, rules, and regulations.

67. Following the pre-final inspection, EPA will determine if further work is needed to complete the construction. If EPA determines that further work is required to be taken, Respondents shall undertake such further work according to a schedule approved by EPA. Within 14 days after completion of the additional work required by EPA, Respondents and their contractor(s) shall be available to accompany EPA personnel and/or its representatives on an inspection as provided for in Paragraph 66, above.

68. Respondents shall submit a draft Remedial Action Report to EPA for review and approval pursuant to Section XV (EPA Review of Submissions) of this Order, within 60 days of

EPA's determination that construction is complete. The draft Remedial Action Report shall be prepared in accordance with the SOW, and this Order. Following EPA approval, the draft Remedial Action Report shall become the Remedial Action Report and shall be incorporated into and an enforceable part of this Order. The draft Remedial Action Report shall include, but not be limited to, all items set forth in Section XI.B.2. of the SOW.

#### C. Post Remediation Soil Sampling, Completion of Work and Institutional Controls

69. When Respondents believe that Cleanup Goals have been met through operation of the soil vapor extraction system, Respondents may petition EPA for approval to perform post remediation soil sampling to confirm that Cleanup Goals have been met. EPA may approve the petition, direct Respondents to continue operation of the soil vapor extraction system, or require Respondents to perform such Work as EPA determines is necessary. If EPA approves such a petition, Respondents shall perform post remediation sampling in accordance with the Post Remediation Soil Sampling Plan. In the event that EPA does not receive such a petition, EPA may direct Respondents to perform post remediation soil sampling.

70. Within sixty (60) days of the completion of post remediation soil sampling, Respondents shall submit to EPA a Final Report for Post Remediation Soil Sampling. The Final Report for Post Remediation Soil Sampling shall summarize the work performed under the Post Remediation Soil Sampling Plan and the data so generated.

71. EPA will determine whether the post remediation soil sampling activities or any portions(s) thereof have been completed in accordance with the standards, specifications, and reports required by the ROD, the SOW, and this Order. EPA will approve, disapprove, or require modifications of the Final Report for Post Remediation Soil Sampling in accordance with procedures set forth in Section XV (EPA Review of Submissions) of this Order. Once approved by EPA, the Final Report for Post Remediation Soil Sampling shall be incorporated into and an enforceable part of this Order.

72. If EPA determines that post remediation soil sampling activities have not been completed, or post remediation soil sampling analyses show that Performance Standards have not been achieved, EPA will notify the Respondents in writing of those tasks which must be performed to complete the post remediation soil sampling or of the need for additional Work, as specified in Section XIII of the SOW.

73. The Respondents shall then implement the tasks that EPA determines must be performed in order to complete the Work for the Site. Within 30 days after completion of those tasks, Respondents shall submit a report to EPA for review and approval pursuant to Section XV (EPA Review of Submissions) of this Order detailing the tasks performed by Respondents and certified by a New Jersey registered professional engineer.

74. EPA will notify Respondents in writing when Post Remediation Soil Sampling Plan activities have been completed in accordance with the requirements of this Order, the SOW and

the ROD.

75. Within 90 days after the Respondents conclude that all phases of the Work have been fully performed, Respondents shall schedule and conduct a pre-certification inspection to be attended by Respondents and EPA. If, after the pre-certification inspection, Respondents still believe that the Work has been fully performed, Respondents shall submit a written report by a New Jersey registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Order, the SOW and the ROD.

76. If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Order, the SOW, or the ROD, EPA will notify Respondents in writing of the activities that must be undertaken by Respondents to complete the Work. Respondents shall implement any activity determined by EPA to be necessary to complete the Work for the Site according to the specifications and schedules established by EPA. Within 30 days after completion of the EPA required action(s), Respondents shall submit a report certified by a New Jersey registered professional engineer to EPA detailing the work performed by Respondents to comply with the EPA required action(s).

77. If EPA determines, after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Order, the SOW, and the ROD, EPA will so notify the Respondents in writing.

78. If requested by EPA, Respondents shall secure institutional controls to restrict the use of the Site for industrial purposes. Institutional controls may include, but not be limited to, deed restrictions.

#### XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS

79. In the event that EPA determines that additional response activities are necessary to meet the Performance Standards, EPA may notify Respondents that additional response actions are necessary.

80. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondents shall submit for EPA approval pursuant to Section XV (EPA Review of Submissions) of this Order, a work plan for the additional response activities. The plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the plan, Respondent shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

#### XII. EPA PERIODIC REVIEW

81. Under Section 121 of CERCLA, 42 U.S.C. §9621, and any applicable regulations, EPA

may review the remedial action for the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under Section 121 of CERCLA. As a result of any review performed under this Paragraph, Respondents may be required to perform additional response activities, or to modify Work previously performed.

### XIII. ADDITIONAL RESPONSE ACTIVITIES

82. EPA may determine that, in addition to the Work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment including meeting Performance Standards and Cleanup Goals. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

83. Not later than 30 days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents shall submit a work plan for the response activities to EPA for review and approval. Upon written approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondents shall notify EPA of their intent to perform such additional response activities within 7 days after receipt of EPA's request for additional response activities.

84. Any additional response activities that Respondents determine are necessary to protect human health and the environment shall be subject to written approval by EPA. If such additional response activities are authorized by EPA, then Respondents shall complete such response activities in accordance with plans, specifications, and schedules approved by EPA pursuant to this Order.

### XIV. ENDANGERMENT AND EMERGENCY RESPONSE

85. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate or minimize the threat, and shall immediately notify EPA's RPM. In the event of the RPM's unavailability, the Respondents shall notify the Chief of the EPA Response and Prevention Branch in Edison, New Jersey, at (732) 321-6658, or if such person or such person's delegatee is unavailable, the EPA Regional Emergency 24-hour telephone number at (732) 548-8730. Respondents shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Contingency Plan and any other documents developed pursuant to the SOW.

86. Nothing in the preceding Paragraph or elsewhere in this Order shall be deemed to limit any authority of the United States to take, direct or order all appropriate action to protect human health and the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances on, at or from the Site.

#### XV. EPA REVIEW OF SUBMISSIONS

87. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in Subparagraph (a) or (b) of this Paragraph.

88. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

89. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, within 21 days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

90. If upon the first resubmission or upon any subsequent resubmission, the plan, report or other item is disapproved by EPA, Respondents shall be deemed to be out of compliance with this Order. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the preceding Paragraphs of this Section. In addition, or in the alternative, EPA retains the right to amend or develop the plan, report or other item.

91. All plans, reports, and other submittals required to be submitted to EPA under this Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Order. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved portion shall be deemed to be incorporated in and an enforceable part of this Order.

92. Respondents may request in writing that EPA approve modifications to EPA-approved reports, schedules, deliverables and other writings required under the terms of this Order at any time during the implementation of the Work required by this Order. Any and all such modifications under this Order must be approved in writing and signed by the Chief of the New

Jersey Remediation Branch, Emergency and Remedial Response Division, EPA-Region II.

a. EPA shall have the sole authority to make any such modifications under this Order

b. EPA alone shall be the final arbiter of all issues and disputes concerning: (i) any reports, schedules, deliverables and other writings required under the terms of this Order which EPA approves or which the Respondents propose under the terms of this Order, and (ii) all Work which shall be required or performed under this Order and/or under any reports, schedules, deliverables and other writings required under the terms of this Order which EPA approves pursuant to the terms of this Order.

#### XVI. PROGRESS REPORTS

93. In addition to the other deliverables set forth in this Order, Respondents shall provide written monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 15th day of each month following the effective date of this Order. Respondents' obligation to submit progress reports continues until EPA gives Respondents written notice under Paragraph 77. At a minimum these progress reports shall include all the items set forth in Section IV of the SOW.

#### XVII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

94. Respondents shall use quality assurance, quality control, and chain of custody procedures for all sample collection and analysis activities in accordance with procedures outlined in Section VI.F. (Quality Assurance/Quality Control Project Plan) in the SOW, and subsequent amendments or changes to those procedures upon notification by EPA to Respondents of such amendments or changes. To provide quality assurance and maintain quality control, Respondents shall:

a. Use only laboratories which have a documented quality system that complies with ANSI/ASQC E-4-1994, SPECIFICATIONS and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs (American National Standard, January 5, 1995) and EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NEAP) to meet the quality system requirements.

b. Ensure that the laboratories used by Respondents for analyses, performs analyses according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least fourteen (14) days before beginning analysis.

c. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

95. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA or its authorized representatives, and/or the State, of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

#### XVIII. COMPLIANCE WITH APPLICABLE LAWS

96. All activities carried out by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the NCP.

97. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

98. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

99. Off-Site Shipment of Waste Material. Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Remedial Project Manager. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial action. Respondents shall provide the information required by Subparagraphs 99.a. and 99.c. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the



requirements of the statutory provision and regulation cited in the preceding sentence.

#### **XIX. REMEDIAL PROJECT MANAGER**

100. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's Remedial Project Manager. Respondents shall submit to EPA and NJDEP copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by certified mail or overnight mail to the following addresses:

- 3 Copies to: Chief, New Jersey Remediation Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
290 Broadway, 19<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: Lightman Drum Company Superfund Site  
Remedial Project Manager
- 1 Copy to: New Jersey Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: Site Attorney, Lightman Drum Company Superfund Site
- 3 Copies to: New Jersey Department of Environmental Protection  
401 East State Street  
Trenton, New Jersey 08625  
Attn: Site Manager, Lightman Drum Company Superfund Site

101. In the event that EPA requests more than the number of copies stated above of any report or other documents required by this Order for itself or the State, Respondents shall provide the number of copies requested. Upon request by EPA, Respondents shall submit in electronic form all or any portion of any deliverables Respondents are required to submit pursuant to the provisions of the Order.

102. EPA has the unreviewable right to change its Remedial Project Manager. If EPA changes its Remedial Project Manager, EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager.

103. EPA's RPM shall have the authority lawfully vested in a RPM and On-Scene Coordinator



("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action.

104. Within 10 days after the selection of a Supervising Contractor, Respondents shall designate a Project Coordinator and shall submit the name, title, address, and telephone number of the Project Coordinator to EPA for review and approval. Respondents' Project Coordinator shall be responsible for overseeing Respondents' implementation of this Order. If Respondents wish to change its Project Coordinator, Respondents shall provide written notice to EPA, 5 days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondents' selection of a Project Coordinator shall be subject to EPA approval.

#### XX. ACCESS TO SITE NOT OWNED BY RESPONDENTS

105. If any action under this Order is to be performed on property that is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owners within 60 days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondents and Respondents' authorized representatives and contractors, and such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with the activities to be undertaken. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any property owner, except to the owner of the Lightman Drum Property. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

#### XXI. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

106. Respondents shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their representatives or contractors pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem

111. Within 90 days after the effective date of this Order, Respondents shall submit a written certification to EPA's RPM and Site Attorney that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site. Respondents shall not dispose of any such documents without prior approval by EPA. Respondents shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

### XXIII. DELAY IN PERFORMANCE

112. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

113. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and electronic mail to EPA's RPM within 48 hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 5 business days after notifying EPA by telephone and electronic mail, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for<sup>1</sup> in this Order is not a justification for any delay in performance.

### XXIV. UNITED STATES NOT LIABLE

114. The United States and EPA, by issuance of this Order, or by issuance of any approvals pursuant to this Order, assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order, or Respondents' failure to perform properly or complete the requirements of this Order. Neither the United States nor EPA may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order, and Respondents shall not represent to anyone that the United States or EPA is or may be a party to any such contract.

115. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorney fees and

other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA.

## **XXV. ENFORCEMENT AND RESERVATIONS**

116. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and/or for any other response costs which have been incurred or will be incurred by the United States relating to the Site. This reservation shall include, but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA.

117. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for their costs, or seek any other appropriate relief.

118. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), *et seq.*, or any other applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

119. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

120. Respondents shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), in the event that Respondents willfully violate, or fail or refuse to comply with this Order without sufficient cause. Such civil penalties shall be in an amount not greater than \$37,500 per day, subject to possible further adjustments of this penalty maximum consistent with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder, including the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and all amendments thereto. In addition, failure to properly carry out response actions under this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by EPA as a result of such failure to take proper action.

121. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

122. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

123. Nothing in the Order shall supersede any provision of Administrative Order, U.S.E.P.A. Index No. 02-2010-2019.

#### XXVI. ADMINISTRATIVE RECORD

124. Upon request by EPA, Respondents shall submit to EPA all documents related to the implementation of the Work for possible inclusion in the administrative record file.

#### XXVII. EFFECTIVE DATE AND COMPUTATION OF TIME

125. This Order shall be effective 20 days following the day that this Order is signed by the Director, Emergency and Remedial Response Division, EPA Region 2, unless a conference is timely requested pursuant to Paragraph 126, below. If such conference is timely requested, this Order shall become effective 3 days following the date the conference is held, unless the effective date is modified by EPA. All times for performance of ordered activities shall be calculated from this effective date.

#### XXVIII. OPPORTUNITY TO CONFER

126. Respondents may, within 15 days of the effective date of the Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within 7 days of Respondents' request for a conference.

127. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

128. Requests for a conference must be by telephone followed by written confirmation sent by overnight mail and electronic mail that day to:

Michael J. van Itallie  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> Floor  
New York, N.Y. 10007-1866  
Telephone: (212) 637-3151  
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**XXIX. TERMINATION AND SATISFACTION**

129. This Order may be terminated by EPA if Respondents demonstrate in writing and certify to the satisfaction of EPA that all Work and activities required under this Order, including any additional work required by EPA, have been performed fully in accordance with this Order and EPA concurs in writing with the certification. Such an approval by EPA, however, shall not relieve Respondents of any remaining obligations under the Order, including those requirements set forth in Section XXII regarding record preservation, or applicable law. Respondents' written submission under this Paragraph shall include a sworn statement by a responsible corporate official of the Respondents as referenced in the SOW.

So Ordered, this 29 day of September 2011.

By: 

Walter Mugdan, Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region II

